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this Memorandum Decision shall not be  
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case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHAD M. MODESITT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 41A05-0604-CR-226
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE JOHNSON SUPERIOR COURT  
The Honorable Cynthia S. Emkes, Judge  
Cause No. 41D02-0405-FC-6

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**November 15, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Chad Modesitt appeals his conviction for battery resulting in serious bodily injury as a class C felony.<sup>1</sup> Modesitt raises one issue, which we restate as whether the evidence is sufficient to sustain Modesitt's conviction. We affirm.

The relevant facts follow. Modesitt and Angela Simpson lived together as boyfriend and girlfriend on May 9, 2004. Early that evening, Modesitt and Simpson smoked crack cocaine and drank vodka. Simpson went to bed alone around 12:30 a.m. In the early morning hours of May 10, 2004, Simpson awoke to find Modesitt on top of her angrily screaming in her face. Modisett pushed Simpson down and held her down by placing his knees on her shoulders. Simpson struggled with Modesitt and asked him to leave. Modesitt refused to leave, picked Simpson up, and threw her across the room. Simpson was injured when she "hit the table and landed on the floor." Transcript from August 11, 2005 Hearing at 6. At trial, Simpson described the pain from her injuries as a constant shooting pain in her side that was "the worst pain I've ever felt in my life." Id. at 7.

Simpson stayed in bed because she was unable to walk due to the pain. She was short of breath, had redness and bruising on her side, and she had a knot on the left side of her forehead. Simpson's father took her to the hospital. She was treated for her injuries at Methodist Hospital, where doctors diagnosed her with a splenic laceration and free fluid in her abdomen. Doctors prescribed Morphine, Vicodin, and Tylenol for Simpson's pain. Simpson was in the hospital for three and one-half days.

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<sup>1</sup> Ind. Code § 35-42-2-1(a)(3) (2004).

The State charged Modesitt with battery resulting in serious bodily injury as a class C felony, criminal confinement as a class D felony,<sup>2</sup> and interference with the reporting of a crime as a class A misdemeanor.<sup>3</sup> At Modesitt's bench trial, the State introduced Simpson's medical records from Methodist Hospital. A Medical Records Certification and Affidavit of the custodian of the records accompanied the records. In the affidavit, the custodian of the records swore under penalty of perjury that the records were true and complete copies of Simpson's medical records, that the original records were made at or near the time of the matters they recorded, that the records were made by or from information transmitted by a person with knowledge of the matters contained in the records, that the records were kept in the regular course of business, and that the keeping of such records was a regularly conducted activity of Clarian Health Partners, Inc.<sup>4</sup> Modesitt objected to the records on the basis that Simpson had not filled out the records herself, that no foundation had been laid for the records because the State had not shown that the tests detailed in the records were performed according to a specified protocol, and that no witness testified that the tests were actually done. Over Modesitt's objection, the trial court admitted the medical records into evidence as certified business documents. The trial court found Modesitt guilty on all charges.

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<sup>2</sup> Ind. Code §35-42-3-3(a)(1) (2004).

<sup>3</sup> Ind. Code §35-45-2-5(1) (2004).

<sup>4</sup> Methodist Hospital is listed on the Affidavit stationary as part of Health, Inc.

The issue here is whether there is sufficient evidence to sustain Modesitt's conviction for battery resulting in serious bodily injury.<sup>5</sup> When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

Modesitt argues that there is insufficient evidence to sustain his conviction. Specifically, he argues that the trial court abused its discretion when it admitted Simpson's medical records, the only evidence of serious bodily injury according to Modesitt, under the business records exception to the hearsay rule.<sup>6</sup> "The admissibility of evidence is within the sound discretion of the trial court, and the decision whether to admit evidence will not be reversed absent a showing of manifest abuse of the trial court's discretion resulting in the denial of a fair trial." Bailey v. State, 806 N.E.2d 329, 331 (Ind. Ct. App. 2004) (citing Johnson v. State, 785 N.E.2d 1134, 1138 (Ind. Ct. App. 2003)), trans. denied. "An abuse of discretion occurs when the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before it." Farris v. State, 818 N.E.2d 63, 67 (Ind. Ct. App. 2004), trans. denied.

"Hearsay is an out-of-court statement offered to prove the truth of the matter asserted, and is not admissible unless it fits within an exception to the rule." Tate v.

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<sup>5</sup> Modesitt does not appeal his other convictions.

<sup>6</sup> Ind.Evid.R. 803(6).

State, 835 N.E.2d 499, 508 (Ind. Ct. App. 2005) (citing Jennings v. State, 723 N.E.2d 970, 972-73 (Ind. Ct. App. 2000)), trans. denied. “Records of regularly conducted business activity are admissible under Indiana Rule of Evidence 803(6).” Id. (citing Serrano v. State, 808 N.E.2d 724, 727 (Ind. Ct. App.2004), reh’g denied, trans. denied).

This rule provides in pertinent part:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness.

\* \* \* \* \*

**(6) Records of Regularly Conducted Business Activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony or affidavit of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. The term “business” as used in this Rule includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

\* \* \* \* \*

Evid.R. 803(6).

Modesitt argues that the trial court erred by admitting Simpson’s medical records because the State failed to lay a proper foundation for the records. Specifically, Modesitt argues:

In the case at bar, the affidavit provided by Denise Miller simply indicates that she is a “ROI specialist” and that these records were made and kept in the regular course of business. However, there is no indication that [Miller] had either personal knowledge of the transactions represented by the fifty-page exhibit entry nor did she have any kind of duty to record these records. In this case, the State of Indiana simply accepted the Medical

Records Certification and Affidavit[,] which was apparently prepared by Clarian Health Methodist, IU, Riley. Said affidavit has absolutely no reference to any personal knowledge by the affiant of the information contained within the records or that [Miller] had indeed had any kind of duty to accept, record[,] or manage said records. The business documents were not within the personal knowledge of the individual with the business duty to report the information and therefore are not admissible as an exception to the hearsay rule.

Appellant's Brief at 6.

Under Evid.R. 803(6), the foundation for business records may be shown “by the testimony or affidavit of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.” Here, the State provided the Medical Records Certification and Affidavit of Miller, the ROI Specialist of Health Information Management at Health Partners, Inc. These documents were provided in lieu of Miller's testimony at trial. In her affidavit, Miller swore “under penalties of perjury that the copies of records for which this certification is made are true and complete reproductions of the original medical records that are housed at Methodist Hospital/University and Riley Hospitals of Clarian Health Partners, Inc.” Exhibit A at 1. In addition, the sworn certification and affidavit provided that “the original records were made and kept in the regular course of business and it is a regularly conducted activity and regular practice of Clarian Health Partners, Inc. to make such patient records at or near the time of the matter recorded, *by or from information transmitted by a person with knowledge of those matters.*” Id. (emphasis added). We find that the State laid the foundation for Simpson's medical records. Therefore, we cannot say that the trial court abused its discretion by admitting those

records. See, e.g., Ground v. State, 702 N.E.2d 728, 731 (Ind. Ct. App. 1998) (holding that the proponent of business records has laid a proper foundation where there is no rebuttal to the presumption in Evid.R. 803(6) that the entries in the business records were made by a person who had a duty to make the record and who had personal knowledge of the event represented by the entry, and where there is proof that the business records are regularly made).

Even if admission of the medical records was in error, not all trial court error is reversible. See Ind. Trial Rule 61. “The improper admission of evidence is harmless when the conviction is supported by substantial independent evidence of guilt sufficient to satisfy the reviewing court that there is no substantial likelihood that the improperly admitted evidence contributed to the verdict.” Winbush v. State, 776 N.E.2d 1219, 1221 (Ind. Ct. App. 2002), trans. denied. “Error in the admission of evidence is disregarded unless it affects the substantial rights of a party.” Id.

During the bench trial, the State introduced Simpson’s testimony regarding her extreme pain as well as photographs of her injuries. In addition, the investigating officer testified about his observations following the incident. Following this incident, Simpson was unable to walk due to the extreme pain, she had difficulty breathing, and she was hospitalized for three and one-half days. Therefore, we find that the medical records were cumulative of the testimony and photographs. Even assuming that the trial court erred in admitting the medical records, it was harmless error. See, e.g., Debro v. State, 821 N.E.2d 367, 375 (Ind. 2005) (holding that admission of medical records was

harmless error where testimony was introduced without objection establishing that victim was battered).

For the foregoing reasons, we affirm Modesitt's conviction for battery as a class C felony.

Affirmed.

NAJAM, J. and KIRSCH, C. J. concur